

June 8, 2007

**DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY**

Appeal

Name of Petitioner: Center for Investigative Reporting

Date of Filing: April 20, 2007

Case Number: TFA-0200

On April 20, 2007, Mr. Will Evans on behalf of the Center for Investigative Reporting (CIR) filed an Appeal from a determination issued to CIR by the FOIA/Privacy Act Group of the Department of Energy (DOE/HQ) on April 6, 2007, in response to a request for documents that CIR submitted under the Freedom of Information Act (FOIA), 5 U.S.C. ' 552, as implemented by the DOE in 10 C.F.R. Part 1004. This Appeal, if granted, would require that DOE expedite the processing of Mr. Evans' FOIA request.

I. Background

The FOIA generally requires that documents held by federal agencies be released to the public on request. In the absence of unusual circumstances, agencies are required to issue a response to a FOIA request within 20 working days of receipt of the request. 5 U.S.C. § 552(a)(6)(A)(i). The FOIA also provides for expedited processing of requests in certain cases. 5 U.S.C. § 552(a)(6)(E).

Mr. Evans filed a request for records related to all requests for earmarks between December 1, 2006 and the present. Mr. Evans described himself as a professional reporter and requested expedited processing because CIR is "primarily engaged in disseminating information and can demonstrate that there is an urgency to inform the public concerning actual or alleged Federal Government activity." Appeal at 1.

On April 6, 2007, the Director of DOE/HQ denied Mr. Evans' request for expedited processing because the Director found that he did not adequately address the requirements for expedited processing. He found that Mr. Evans did not establish any threat to the life or safety of an individual that would justify expedited processing. Further, the Director concluded that Mr.

Evans did not identify any particular urgency that requires the provision of the requested information in an expedited manner.

On April 20, 2007, Mr. Evans submitted this appeal of DOE/HQ's denial of expedited processing. Mr. Evans asks that OHA order DOE/HQ to expedite the processing of his FOIA request.

II. Analysis

Agencies generally process FOIA requests on a "first in, first out" basis, according to the order in which they are received. Granting one requester expedited processing gives that person a preference over previous requesters, by moving his or her request "up the line" and delaying the processing of earlier requests. Therefore, the FOIA provides that expedited processing is to be offered only when the requester demonstrates a "compelling need," or when otherwise determined by the agency. 5 U.S.C. § 552(a)(6)(E)(i). "Compelling need," as defined in the FOIA, arises in either of two situations. The first is when failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. The second situation occurs when the requester, who is primarily engaged in disseminating information, has an urgency to inform the public about an activity of the federal government. 5 U.S.C. § 552(a)(6)(E)(v).

Courts have found sufficient exigency to grant expedited processing in situations of an "ongoing public controversy associated with a specific time frame." *Long v. Department of Homeland Security*, 436 F. Supp. 2d 38 (D.D.C. 2006). Requesters have demonstrated urgency in several ways. *See e.g., Washington Post v. Department of Homeland Security*, 459 F. Supp. 2d 61 (D.D.C. 2006) (granting expedited processing based on public need for requested material to inform voters prior to upcoming election); *Gerstein v. CIA*, No. C-06-4643, 2006 WL 3462658 (N.D. Cal. November 29, 2006) (granting expedited processing because of significant interest in quickly disseminating news regarding a subject currently under debate by Congress). *See also Edward A. Slavin, Jr.*, 27 DOE ¶ 80,279 n.2 (2000) (discussing request to expedite documents for upcoming administrative hearing). Courts have denied requests for expedited processing if the requester fails to demonstrate urgency. *See, e.g., Long*, 436 F. Supp. 2d at 43-44 (denying request due to generalized need for information and requester's failure to identify an imminent action); *Electronic Privacy Info. Ctr. v. Department of Justice*, 322 F. Supp. 2d 1 (D.D.C. 2003) (concluding that plaintiff failed to demonstrate urgency because its proffer of 31 newspaper articles concerning the general subject of FOIA request did not make a story a matter of "current exigency").

In his appeal, Mr. Evans explains his request for records concerning earmark requests for the budget of FY 2007. He states that on February 15, 2007, President Bush signed a resolution providing funding for the Department of Energy's programs through the remainder of FY 2007. Appeal at 2. Mr. Evans further states that the Department's process for allocating funding is already underway and that the process to evaluate continued earmarks is a federal government activity, which meets one of the criteria for expedited FOIA processing. Mr. Evans also contends that there "has been extensive coverage of earmarks by the press and widespread concern about earmarks from members of the public and citizen advocacy group." *Id.* In addition, Mr. Evans states that "informed members of the public might voice opinions on earmark reform and earmark requests potentially affecting the 2007 budget if they had additional

information on requests for earmarks.” *Id.* Mr. Evans concludes that the decision-making on this matter is occurring “right now” and that “any delay in processing this request would deprive the public of its ability to make known its views in a timely manner.” Finally, Mr. Evans asserts that there is an urgency to inform the public since the value of the information will be lost if not disseminated quickly. *Id.*

After reviewing the record of this case, we find that Mr. Evans has not established a compelling need for expedited processing of his request. Although he states that there is a debate occurring now on earmark requests and reform, he has still not established an urgency for the release of the material requested. A generalized public interest in the information is simply not enough to grant expedited processing of a FOIA request. *Long*, 436 F. Supp. 2d at 43-44. Accordingly, his Appeal should be denied.

It Is Therefore Ordered That:

- (1) The Freedom of Information Act Appeal filed by Center for Investigative Reporting on April 20, 2007, OHA Case Number TFA-0200, is hereby denied.
- (2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. ' 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

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Office of Hearings and Appeals

Date: June 8, 2007